



Federal Communications Commission
Washington, D.C. 20554

November 2, 2009

DA 09-2367

Southern Oregon University
Ronald H Kramer
1250 Siskiyou Blvd
Ashland, OR 97520

Dear Mr. Kramer:

On August 24, 2009, the State of Oregon acting by and through the Oregon State Board of Higher Education for the benefit of Southern Oregon University (collectively, the Board of Higher Education) filed an application to reinstate and renew Microwave Industrial/Business Pool Station license WNEU534, Placer, Oregon.¹ The Board of Higher Education requests that we waive the Commission's Rules to allow its application to be accepted even though it was filed late.² For the reasons stated below, we deny the Board of Higher Education's Waiver Request and dismiss its Renewal Application.

On January 26, 2009, the Commission sent the Board of Higher Education a notice that the license for WNEU534 was scheduled to expire on April 19, 2009.³ The Board of Higher Education submitted a timely renewal application on February 20, 2009.⁴ The next day, the Commission informed the Board of Higher Education by letter that it was returning its application because it did not include an attachment that justified an exemption from application and/or regulatory fees.⁵ Because the Board did not amend its application within 60 days of the First Notice of Return, the Commission dismissed the First Renewal Application on May 12, 2009.⁶ In addition to the Notice of Dismissal, the Commission's action was also announced in a Public Notice.⁷ The petition for reconsideration period ended on June 23, 2009.⁸

On August 24, 2009, the Board of Higher Education filed the Renewal Application and Waiver Request. The Board did not specify which of the Commission's Rules it wants to be waived, but we interpret its request as seeking waiver of Section 1.949(a), which requires licensees to file Renewal Applications no later than the expiration dates of licenses.⁹ The Commission returned the application because the Board of Higher Education again did not include an attachment justifying an exemption from

¹ See File No. 0003946374 (filed Aug. 24, 2009) (Second Renewal Application).

² Renewal Application, Request for Waiver (Waiver Request). In order for us to grant that request, we would need to waive Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949.

³ Renewal Reminder Notice, Ref. No. 4828238 (Jan. 26, 2009) (Renewal Reminder Notice).

⁴ See File No. 0003745728 (filed Feb. 20, 2009) (First Renewal Application).

⁵ Notice of Return, Ref. No. 4836319 (Feb 21, 2009) (First Return Notice).

⁶ Notice of Dismissal, Ref No. 4863434 (May 12, 2009) (Notice of Dismissal).

⁷ Wireless Telecommunications Bureau Site-By-Site Action, Report No. 4936, *Public Notice* (May 13, 2009) at 22.

⁸ See 47 C.F.R. § 1.106.

⁹ See 47 C.F.R. § 1.949.

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application and/or regulatory fees.¹⁰ On August 31, 2009, the Board of Higher Education modified its application to include the necessary attachment.¹¹

The Commission's policy regarding renewal procedures in the Wireless Radio Services is as follows: renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹² Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹³ In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to file on time, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹⁴ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that the Second Renewal Application submitted by the Board of Higher Education should be dismissed.¹⁵

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.¹⁶ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹⁷ Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸

Significantly, the Board of Higher Education does not address the Commission's policy regarding late-filed renewal applications. The Board also fails to provide any reason concerning why a waiver grant is warranted under the circumstances presented. Rather, the Board of Higher Education merely states that it did not receive notification of license expiration from the Commission.¹⁹ In fact, the Board of Higher

¹⁰ Notice of Return, Ref. No. 4897843 (Aug. 25, 2009).

¹¹ See File No. 0003946374 (filed Aug. 31, 2009) (Justification for Fee Exemption).

¹² Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

¹³ *Id.* at 11486 ¶ 22.

¹⁴ *Id.* at 11485 ¶ 22.

¹⁵ See, e.g., WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed Renewal Applications after the licenses expired, and dismissing the subject applications).

¹⁶ 47 C.F.R. § 1.949(a).

¹⁷ 47 C.F.R. § 1.955(a)(1).

¹⁸ 47 C.F.R. § 1.925(b)(3).

¹⁹ Waiver Request.

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Education did originally file a timely renewal application, but it failed to respond to the First Return Notice. The First Return Notice clearly stated that the First Renewal Application would be dismissed if a response was not received within 60 days.²⁰ We find that the Board of Higher Education's failure to explain why it did not respond to the First Return Notice precludes a finding that a waiver would be in the public interest.

As has been previously held, an inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.²¹ Further, each licensee is solely responsible for knowing the terms of its license and submitting a renewal application to the Commission in a timely manner.²² Thus, we deny the Board of Higher Education's request for a waiver to permit the late renewal of its license and dismiss the application as untimely filed.

We conclude that the role of the facilities in maintaining Board of Higher Education's FM radio stations is, by itself, insufficient to justify a waiver. If the Board wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.²³ If the Board needs to continue operating the facilities in the meantime, it can seek special temporary authority (STA) pursuant to Section 1.931 of the Commission's Rules.²⁴

Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by the State of Oregon acting by and through the Oregon State Board of Higher Education for the benefit of Southern Oregon University on August 24, 2009, IS DENIED, and application File No. 0003946374 SHALL BE DISMISSED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

²⁰ See First Return Notice.

²¹ See *Fresno City and County Housing Authorities, Order on Reconsideration*, 15 FCC Rcd 10998, 11002 ¶ 11 (WTB PSPWD 2000) (citing *Plumas-Sierra Rural Electric Cooperative, Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

²² *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 n.41 (1991).

²³ See 47 C.F.R. § 101.103.

²⁴ See 47 C.F.R. § 1.931.